

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Northern Division**

**AUDREY WILSON**

\*

**Plaintiff,**

\*

**v.**

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**Civil Action No. CCB-02CV3341**

**ST. AGNES HEALTHCARE, INC. *ET AL.***

\*

**Defendants.**

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\* \* \* \* \*

**DEFENDANT'S MOTION FOR SANCTIONS**

Defendant St. Agnes HealthCare, by and through its undersigned counsel, files this Motion for Sanctions in accordance with Rule 37 of the Federal Rules of Civil Procedure.

Defendant states that the reasons for this Motion are as follows:

1. Plaintiff's Notice of Deposition was served on February 11, 2003;
2. That Notice identified the date for Plaintiff's deposition as March 11, 2003, at 10:00 a.m. in Defendant's counsel's law offices;
3. On March 11, 2003, neither Plaintiff nor her counsel appeared for the deposition nor did the Plaintiff or her counsel notify or communicate in any way with Defendant's counsel as to why Plaintiff failed to appear for her duly noted deposition; and
4. At approximately 11:20 a.m. Defendant's counsel adjourned the deposition of the Plaintiff.

For all of the foregoing reasons, as well as those set forth in more detail in the attached Memorandum, Defendant respectfully requests that its Motion for Sanctions be granted and that Plaintiff be directed to pay all reasonable costs, including attorney fees, that Defendant incurred because of Plaintiff's failure to appear at the duly noted deposition.

Dated: March 12, 2003

Respectfully submitted,

**KRUCHKO & FRIES**

**OF COUNSEL:**

KRUCHKO & FRIES  
Suite 305  
600 Washington Avenue  
Baltimore, Maryland 21204  
(410) 321-7310

By:           /s/            
Kathleen A. Talty  
Federal Bar No.: 022971

Counsel for Defendant  
St. Agnes HealthCare, Inc

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**MEMORANDUM IN SUPPORT  
OF DEFENDANT'S MOTION FOR SANCTIONS**

Defendant, St. Agnes HealthCare, by and through its undersigned counsel, files this Memorandum in Support of Its Motion for Sanctions in accordance with Rule 37 of the Federal Rules of Civil Procedure. For reasons that are argued more fully below, Defendant submits that its Motion should be granted because Plaintiff failed to appear at her duly noted deposition.

**ARGUMENT**

Federal Rule of Civil Procedure 37(d) allows the court to sanction parties who fail "to appear before the officer who is to take the deposition, after being served with proper notice ...." These sanctions, outlined at Rule 37(b)(2)(A)-(C), become progressively more severe, ranging from an order establishing certain facts to the entry of a default judgment. The facts in this case fully support the imposition of sanctions, including an award of attorney fees and costs.

In late January, 2003, Defendant's counsel wrote to Plaintiff's counsel, proposing five possible dates in February, 2003 for the Plaintiff's deposition. On February 4, 2003, Plaintiff's counsel advised Defendant's counsel that none of the proposed dates were convenient and requested alternative dates for the Plaintiff's deposition. In response to that letter, Defendant's counsel wrote to Plaintiff's counsel on that same day and presented two dates in late February, 2003 and two dates in early March, 2003 for the Plaintiff's deposition. On February 10<sup>th</sup>, Plaintiff's counsel advised Defendant's counsel that March 11<sup>th</sup> "works best for my client and me" for the Plaintiff's deposition. Therefore, on February 11, 2003, Defendant served Plaintiff with a Notice of Deposition, stating that the deposition was to be held on March 11<sup>th</sup> at 10:00 a.m. in Defendant's counsel's law offices.

Despite the fact that Plaintiff's deposition was duly noted and the actual date of the deposition was the specific one identified by Plaintiff's counsel as the one that "works best for my client and me", neither the Plaintiff nor her counsel appeared for the deposition at the scheduled date and time. Moreover, at no time on March 11<sup>th</sup> did Plaintiff or her counsel make any attempt to notify Defendant's counsel 1) that they would be delayed or 2) that they would be late for the deposition or 3) that the deposition would need to be rescheduled. Finally, at approximately 11:20 a.m., Defendant adjourned the deposition and advised the court reporter, who had been waiting since before 10:00 a.m., that the Plaintiff's deposition was canceled for that day. The actions of Plaintiff in failing to appear at her deposition are clearly sanctionable under Rule 37.

In this case, Defendant, St. Agnes HealthCare, is not requesting the imposition of

one of the more severe sanctions for a Rule 37 violation. Rather, the Defendant seeks an order, directing the Plaintiff to reimburse Defendant for reasonable attorney fees and costs incurred because of Plaintiff's failure to appear for her duly noted deposition.

**CONCLUSION**

For all of the foregoing reasons, Defendant respectfully requests that the Court order the Plaintiff to pay the reasonable attorney fees and costs that Defendant has incurred.

Dated: March 12, 2003

Respectfully submitted,

**KRUCHKO & FRIES**

**OF COUNSEL:**

**KRUCHKO & FRIES**  
Suite 305  
600 Washington Avenue  
Baltimore, Maryland 21204  
(410) 321-7310

By:           /s/            
Kathleen A. Talty  
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Counsel for Defendant  
St. Agnes HealthCare, Inc

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\* \* \* \* \*

**ORDER**

Upon consideration of Defendant's Motion for Sanctions and Plaintiff's Opposition thereto, it is hereby ORDERED on this            day of            , 2003 that Plaintiff pay the reasonable attorney fees and costs incurred by Defendant because of Plaintiff's failure to appear for her deposition.

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Catherine C. Blake  
U.S. District Court Judge